The Pennoyer framework in action

- Mitchell, an Oregon resident, sues Neff, a California resident, in Oregon state court for unpaid lawyer’s fees that Neff incurred in Oregon while he was a resident of Oregon  
- service of the summons and complaint are delivered to Neff in hand in California  
- PJ?

NO – not served in Oregon

- Mitchell, an Oregon resident, sues Neff, a California resident, in Oregon state court for unpaid lawyer’s fees that Neff incurred in Oregon while he was a resident of Oregon  
- there is in-hand service of the summons and complaint upon Neff while he is in Oregon on a brief business trip  
- PJ? – YES

- Mitchell, an Oregon resident, sues Neff, a California resident, in Oregon state court for unpaid lawyer’s fees that Neff incurred to Mitchell in California – Neff was never an Oregon resident  
- there is in-hand service of the summons and complaint upon Neff while he is in Oregon on a brief business trip  
- PJ?

Yes – whether there is personal jurisdiction is independent of where are the cause of action arose

Because Neff was served in Oregon, there is personal jurisdiction in Oregon for any cause of action Mitchell might have against him.

- Pennoyer, an Oregon resident, sues Neff, a California resident, in Oregon state court in order to quiet title to property in Oregon that each claims he owns  
- service on Neff is in-hand in California  
- PJ?

Yes this is a quasi in rem action of the first time – the service is a relevant to whether there is personal jurisdiction

- Pennoyer, an Oregon resident, brings a suit to quiet title to Oregon property that he claims he owns  
- he brings an action in Oregon state court that he hopes will bind everyone in the world  
- service is by publication  
- it is determined that Pennoyer owns the property  
- is Neff, a Californian in California, who has a claim on the property bound by the judgment?

Yes, at least as far as personal jurisdiction is concerned. This is an in rem action

- Pennoyer, an Oregon resident, sues Neff, a California resident, in Oregon state court for breach of a contract Neff entered into to sell Pennoyer property in California   
- Pennoyer gave Neff the money but Neff has not given Pennoyer the property  
- Pennoyer asks for an injunction ordering Neff to transfer title to the Cal. property to Pennoyer  
- service is in hand on Neff in Oregon

This is a tough one. In fact there is personal jurisdiction, because what is being created is an obligation on Neff’s person to perform a particular act. The court is not purporting to change ownership of the California property. It is putting an obligation on Neff to transfer title. And it can do that because Neff was served within the borders of Oregon.

§ 94. Decree To Be Carried Out In Another State  
A state can exercise jurisdiction through its courts to make a decree directing a party subject to the jurisdiction of the court to do an act in another state, provided such act is not contrary to the law of the state in which it is to be performed.

- Pennoyer, an Oregon resident, sues Neff, a California resident, in Oregon state court for breach of a contract Neff entered into to sell Pennoyer property in California   
- Pennoyer gave Neff the money but Neff has not given Pennoyer the property  
- Pennoyer asks the court to *transfer title to Pennoyer*  
- service is in hand on Neff in Oregon

- this will not work. The court is purporting to act in rem, but the property is not in Oregon.

- Mitchell, an Oregon resident, brings an action against Neff in Oregon state court concerning $253.14 in legal fees that were incurred in Alaska  
- Neff resides in California  
- the Oregon state court attaches property in Oregon owned by Neff worth $300 at the beginning of the suit

There is personal jurisdiction–this is a quasi in rem case of the second type

- Mitchell, an Oregon resident, brings an action against Neff, a California resident, in Oregon state court concerning $253.14 in legal fees  
- the personal jurisdictional basis for the suit is $200 property in Oregon owned by Neff  
- Neff defaults  
- the property is sold and the money given to Mitchell  
- Mitchell then brings a suit *on the Oregon judgment* in California state court to recover the remaining $53.14  
- service on Neff is in-hand on California  
- what result?

Mitchell cannot sue on the Oregon judgment because it did not create a debt. It could only create a debt if there was in personam personal jurisdiction over Neff. But there wasn’t. There was only jurisdiction over neff’s property.

One way of thinking of it is that the quantum of personal jurisdictional power that the Oregon court has is limited by the property. It has only $200 worth of power. But Mitchell is free to sue on the remaining $53.14 in California or in any other state where Neff has property. But he has to bring a new lawsuit. You cannot sue on the Oregon judgment.

- Mitchell lures Neff to Oregon with a story that Neff has won a contest  
- while he is in Oregon, Neff is served for a suit brought by Mitchell in Oregon state court concerning unpaid lawyers fees  
- Neff chooses to default  
- under Oregon law, someone can be submitted to personal jurisdiction on the basis of tagging in the state even when the tagging is the result of fraudulent inducement  
- Mitchell then brings a suit in California state court to execute the Oregon judgment  
- under California law someone cannot be submitted to personal jurisdiction on the basis of tagging in the state when the tagging is the result of fraudulent inducement  
- Neff argues that the earlier Oregon judgment is void  
- what result?

The first question is whether Oregon’s approach is constitutional under the Pennoyer framework.

The answer is yes. The Pennoyer approach is really about power over persons and things with in the state’s borders. It is not a moral notion of justified authority.

The next question is whether the full faith and credit clause is satisfied by the California court using its views about personal jurisdiction or whether it has to use Oregon’s views. One might say that if the California court treats the Oregon judgment the same way it would treat a California judgment, Full faith and credit is satisfied. Since a Cal judgment of the same type would not be respected in California courts, and Oregon judgment of that type does not have to be either. But that isn’t so.

the recognizing jurisdiction must give the judgment the *same effect* it would have in the rendering jurisdiction’s courts  
e.g. a California court must give the Oregon judgment the same effect it would have in Oregon state court.

Since the Oregon judgment will be respected in Oregon, it must be respected in California too.

It is important to draw a distinction between what a state has the constitutional power to do as far as personal jurisdiction is concerned, and what it actually chooses to do. Here California is not choosing to exercise power that it has.

The sections from the first restatement of conflicts that I had you guys read spells out what states in general choose to do. It still gives you a good deal of information about limits on their power under the Pennoyer framework. But at times it may be more restrictive than the Pennoyer framework.

- Mitchell has Neff tagged in Ore. while he is there for a business trip  
- Mitchell’s suit is in Ore. state ct and concerns unpaid lawyers fees  
- Neff appears to litigate the merits  
- While Neff is there Pennoyer has him served in connection with another unrelated suit, brought in Ore. state ct, concerning a brawl in Cal.  
- PJ? Yes – although sometimes states choose not to assert personal jurisdiction in such cases.

- Mitchell sues Neff (a California resident) in Oregon state court concerning lawyers fees Mitchell performed for Neff in California  
  
- Neff has never been to Oregon and has no property there  
- Neff appears to argue that the court has no PJ over him  
- does the court have PJ over him?

Curiously, yes, although states often choose not to assert personal jurisdiction under such circumstances. If they choose to assert personal jurisdiction, the defendants only choice is to default and collaterally attack when the plaintiff sues on the default judgment in another jurisdiction.

- Neff is domiciled in Oregon, but is on an extended trip in California  
- Mitchell sues Neff in Oregon state court for unpaid lawyers fees incurred in Alaska  
- He has Neff served in California  
PJ? Yes

It took a while, but even under the Pennoyer framework, States were allowed to assert in personam jurisdiction over their domiciliaries in the absence of Service within the state.

This makes perfectly good moral sense, but it doesn’t seem to be in keeping with the power theory standing behind the Pennoyer framework.

Notice that here domicile is being used as a source of personal jurisdiction, even though it can also be relevant for subject matter jurisdiction under diversity, if the action is in federal court.

- Neff is domiciled in California, but is spending the summer residing in Oregon  
- Mitchell sues Neff in Oregon state court for unpaid lawyers fees incurred in Alaska  
- he has Neff served in California, while he was there for a brief trip home  
- PJ?

There is not much law on this. It is an interesting question whether residence, as opposed to domicile, can be a source of in personam jurisdiction.

this is the big problem:  
Neff, a domiciliary of California, enters Oregon, kills Mitchell’s family, and returns to California  
Neff owns no property in Oregon  
Mitchell sues Neff in Oregon state court for wrongful death  
PJ?

No – under the Pennoyer framework. The question is solely weather the defendant or his property is within the borders of Oregon at the beginning of the lawsuit. Neff has no property in Oregon and is currently in California.

But it seems morally justified for Oregon to assert adjudicative power over someone who did something in Oregon in the past. This will be allowed under International Shoe.

Even under the Pennoyer framework, however, states were sometimes able to get around this problem by resort to legal fictions.

In Hess v. Pawloski (U.S. 1927) the Supreme Court upheld a Massachusetts statute that stated that driving within Massachusetts amounted to the appointment of an official in Massachusetts as the driver’s agent for service of process, in the sense that service upon the agent in Massachusetts will be sufficient for service upon the driver within Massachusetts, thereby creating PJ.

The statute in effect created a continued presence within Massachusetts to allow for this state’s courts to get in personam jurisdiction over people from outside the state for acts committed within the state in the past

But there were constitutional limits on the ability to rely on these statutes. You don’t need to know the details, but the problem was the privileges and immunities clause. A state could prohibit someone from driving within its borders, because cars were considered dangerous instrumentalities. For that reason, it could condition driving in the state upon an appointment of an agent for service of process (in the narrow sense that would create personal jurisdiction). But he could not prohibit individuals from doing business within the state, or traveling through the state in other ways.

All you need to know is that these statutes couldn’t get completely around the problem of getting in personam jurisdiction over individuals for past act in the state.

Now corporations

The problem here is the corporations are not like human beings. Human beings have bodies that make it clear wherever they are at any moment.

How do you get in personam jurisdiction over a corporation?

the D Corp., incorporated in California, has an agent go to Oregon where he sells a product to P   
- the product harms P  
- P seeks to sue the D Corp. in California state court  
- is there PJ?

Yes – corporations were considered to be subject to in personam jurisdiction in their state of incorporation.

But what about other states?

the D Corp., incorporated in California, has an agent go to Oregon where he sells a product to P   
- the product harms P  
- P seeks to sue the D Corp. in **Oregon state court**  
- is there PJ?

* Under Pennoyer framework there was no source of personal jurisdiction as this case is described. This would be like an individual going into a state doing something and then going back to his home state. No personal jurisdiction, unless the individual had property within the state
* It would not work for the CEO or for any other employee of the corporation to be tagged (served) in the state.
* The corporation is not the same thing as that individual.

So there are two problems for corporations under the Pennoyer framework

* How do you get personal jurisdiction over them for past acts in the state (this is the same problem that occurred for individuals)
* How do you determine whether a corporation is present within a state other than its state of incorporation? (this was not a problem for individuals, because they have bodies)

Again, statutes creating legal fictions were often relied upon by states to solve these problems.

- the D Corp., incorporated in California, wishes to do business in Oregon  
- to do so, Oregon requires the D Corp. to appoint the Sect. of State of Oregon as its agent for service of process (in the narrow sense that service on the agent what create in personam jurisdiction on the corporation in the state)  
- the D Corp. does  
- P is harmed by a D Corp. product and sues the D Corp in Oregon state court, serving the Sect. of State of Oregon   
- is there PJ?

- the Supreme Court will often uphold such statutes

They would also often uphold them in the following circumstances

- the D Corp., incorporated in California, wishes to do business in Oregon  
- Oregon takes doing business in Oregon to constitute appointment of the Sect. of State of Oregon as its agent for service of process  
- P is harmed by a D Corp. product and sues the D Corp in Oregon state court, serving the Sect. of State of Oregon   
- is there PJ?

BUT here too there was a limit on the ability to rely upon such statutes. Once again, you do not need to know the details, but it had to do with the commerce clause. A state could forbid a corp from doing intrastate commerce and so could condition doing it on the appt of an agent in the state that would create PJ

But it could not forbid the corp from doing interstate commerce

The main point is that these statutes were not able to fully solve these problems with the Pennoyer framework. That made international shoe necessary.